UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.164/10
24 June 1993

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 12-30 July 1993

A GUIDE TO THE ISSUES BEFORE THE CONFERENCE PREPARED BY THE CHAIRMAN

1. This document is presented by the Chairman pursuant to the request made to him by the Conference to prepare a list of subjects and issues for the guidance of the Conference. The content of the document is without prejudice to the position of any delegation on any of the matters referred to therein. Further, this list is not necessarily exhaustive and does not preclude consideration of matters not included in this document.

2. The Chairman wishes to express his appreciation to the delegations that made available to him their suggestions, proposals and position papers. These have been most helpful. They have been published as documents of the Conference.

PART ONE

INTRODUCTION

3. This Conference has been convened with a view to promoting effective implementation of the provisions of the 1982 United Nations Convention on the Law of the Sea 1/ on straddling fish stocks and highly migratory fish stocks. For this purpose, the Conference is requested:

(a) To identify and assess existing problems related to the conservation and management of such fish stocks;

(b) To consider means of improving fisheries cooperation among States;

(c) To formulate appropriate recommendations. 2/

4. The work and results of the Conference should "be fully consistent" with the provisions of the Convention, "in particular the rights and obligations of coastal States and States fishing on the high seas". In addition, "States should give full effect to the high seas fisheries provisions of the Convention with regard to fisheries populations whose ranges lie both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks". 3/

5. The provisions relating to the conservation and management of the living resources of the high seas are to be found in Part VII, Section 2, articles 116-120, of the Convention. Additional provisions specifically dealing with straddling fish stocks and highly migratory fish stocks are to be found in article 63 (2) and article 64, respectively. In considering the issues relating to the implementation of the provisions of the Convention, it is useful to recall the substance of the relevant provisions of the Convention that deal with the conservation and management of high seas living resources in general, and also those provisions that deal with the conservation and management of straddling fish stocks and highly migratory fish stocks, in particular.

6. The Convention establishes a general obligation on all States to cooperate in the conservation and management of the living resources of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, have an obligation to enter into negotiations with a view to taking the measures necessary for the conservation of the living resources. To this end, they are required, as appropriate, to cooperate to establish subregional and regional fisheries organizations. In addition, all States have the duty to take, or to cooperate with other States in taking, measures necessary for the compliance by their respective nationals with the regime for conservation and management of the living resources of the high seas (articles 117 and 118).

7. The Convention elaborates upon the nature of the actions that States are required to take for the conservation of the living resources (article 119). These include:

(a) The taking of measures, "on the best scientific evidence available", to ensure that harvested species are maintained at, or restored to, levels which can produce "maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global";

(b) The taking of measures to maintain or restore populations of species associated with, or dependent on, harvested species, so that they are not reduced to levels at which their reproduction may become seriously threatened;

(c) A general obligation to contribute and exchange on a regular basis, where appropriate, through subregional, regional or global organizations, available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks.

8. States are also required to ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

9. The general obligations imposed on States whose nationals fish on the high seas, in respect of conservation of the living resources of the high seas are similar, if not identical, to the obligations imposed upon coastal States in respect of the conservation of the living resources of the exclusive economic zone (compare article 119 with article 61, paragraphs 2, 3 and 4). Both have the overriding objectives of ensuring sustainable yield of stocks that are harvested, and to avoid serious threats to the populations of associated and dependent species. This however does not imply that the measures to be taken must necessarily be identical, provided a minimum standard for conservation is maintained in both parts of the sea.

10. The Convention establishes specific obligations for cooperation on concerned States, in respect of certain types of stocks:

(a) With respect to straddling fish stocks:

In article 63 (2), it requires that the coastal State and States that are engaged in fishing on the high seas for the same stocks, or stocks of associated species, that "occur both within the exclusive economic zone and in an area beyond and adjacent to that zone", shall seek to agree upon the conservation measures necessary for the conservation of these stocks in the adjacent area. This cooperation may be effected either directly or through appropriate subregional or regional organizations;

(b) With respect to highly migratory fish stocks:

In article 64, it requires the coastal State and other States whose nationals fish in the region for highly migratory species to cooperate directly, or through appropriate international organizations, to ensure conservation and to promote "the objective of optimum utilization" of those species, both within and beyond the exclusive economic zone. This additional provision is without prejudice to the sovereign rights of the coastal State over the resources within its exclusive economic zone, as provided for in the Convention. If no appropriate international organization exists, article 64 requires that the coastal State and other States that fish the species "shall cooperate to establish such an organization and participate in its work".

11. Fishing on the high seas requires the fulfilment by States whose nationals fish on the high seas, of the obligation to cooperate in the establishment of measures for the conservation and management of the fishery in question, and compliance with the other provisions of section 2 of Part VII of the Convention and with the provisions of articles 63 (2) and 64. Cooperation is required even if there is no competent organization for the management of the resources in a subregion or region. The obligation to cooperate carries with it the obligation to enter into negotiations with other interested States, with a view to arriving at an agreement on the necessary measures (article 118). The interested States in this case are other States whose nationals exploit identical living resources or different resources in the same area of the high seas (article 118) and in

the case of straddling fish stocks (article 63 (2)) or highly migratory fish stocks (article 64), the coastal State concerned and other States whose nationals fish for such stocks in the subregion or region. Some of the elements necessary for the establishment of conservation measures are indicated in the Convention. Others arise from the practical needs for an effective implementation of the provisions of the Convention.

12. Many of the principles in the Convention which are the basis for the establishment of conservation and management regimes have to be elaborated upon at the global level, in order to avoid the development of disparate practices in different subregions or regions. These would then provide the framework within which more specific subregional and regional arrangements may be elaborated and adopted, taking into account the circumstances prevailing in the different regions and the nature of the different fish stocks.

PART TWO

ISSUES TO BE ADDRESSED

13. The Conference, therefore, has to consider the practical means necessary to give effect to the provisions of the Convention relevant to straddling fish stocks and highly migratory fish stocks, taking into account the general obligation of States concerning the conservation and management of the living resources of the high seas. In doing so, account should also be taken of the deliberations, decisions and recommendations of the 1992 United Nations Conference on Environment and Development (UNCED), 4/ as well as other agreements or decisions and the practice of States, consistent with the provisions of the Convention. The issues, as they relate to the straddling fish stocks and highly migratory fish stocks, that may be considered by the Conference for the formulation of its recommendations are, inter alia, the following:

The nature of conservation and management measures to be established through cooperation

I. What is the general nature of the measures that States must cooperate to establish for the conservation and management of the two types of fish stocks? The measures may deal, inter alia, with the following:

(a) The establishment of a total allowable catch (TAC) at levels which allow the stock to produce maximum sustainable yield, having regard to relevant environmental and economic factors;

(b) The promotion of optimum utilization of the fish stocks concerned and their long-term sustainability;

(c) The avoidance of over-exploitation;

(d) The taking into account of the special requirements of developing countries;

(e) The avoidance of serious effects on associated or dependent species;

(f) The use of a precautionary conservation and management approach;

(g) The selection of gear and the use of environmentally safe fishing gear and technology, in order to minimize waste, discards and untargeted catches;

(h) The promotion of responsible fishing practices;

(i) The effective contribution and timely exchange of scientific information, catch and fishery effort statistics and other data relevant to the conservation of fish stocks in order to ensure that the best scientific evidence available is used for management decisions;

(j) The mechanism and procedures for cooperation in scientific research relevant to the conservation and management of the two types of fish stocks.

The mechanisms for cooperation

II. How should the mechanism for cooperation in respect of the two stocks be established? The following matters may be considered:

(a) The manner in which direct cooperation is to be established:

(i) Institutionalize or ad hoc consultations;

(ii) Consultations may be requested by any interested State;

(iii) The objective of the consultations - to agree on conservation measures with respect to a particular fish stock or stocks;

(b) The establishment of regional or subregional organizations or arrangements for the conservation and management also requires the consideration of the following:

(i) The fish stock or stocks to which a regional arrangement is applicable;

(ii) The geographical area to be covered by the agreement, taking into account any special environmental or other characteristics of the region and the biological and other characteristics of the stock or stocks concerned;

(iii) Membership or participation;

(iv) Duty to participate in regional fisheries organizations or arrangements;

(v) Internal structures, including procedures that facilitate decision-making on conservation and management measures;

(vi) Financing;

(vii) Relationship with existing regional fisheries bodies which have limited membership or different objectives;

(viii) When appropriate, the encouragement of non-parties concerned with fisheries in the region to join regional fisheries conservation and management organizations, arrangements or agreements, and measures to dissuade non-parties from undermining the conservation regime established for the region;

(ix) Conditions for membership of new entrants;

(x) Negotiations for a quota or a share in the fishing effort for new entrants should fully respect the interests of existing member States, especially where a fishery resource is already being fully utilized, and should take into account other relevant factors including the existence of a moratorium on fishing;

(xi) Special consideration for new entrants from developing countries of the same region or subregion;

(c) The need for members of existing regional organizations for high seas fisheries to review their cooperation mechanisms, with a view to the effective implementation of the relevant provisions of the 1982 United Nations Convention on the Law of the Sea and other international agreements consistent with the Convention and the recommendations of this Conference;

(d) The need to provide assistance to developing countries to enable them to develop their capabilities, including the provision of financial, scientific and technological means as well as training, in order that they can fulfil their obligations with respect to conservation and management, monitoring, control and surveillance, including enforcement measures concerning the two types of stocks.

Responsibilities of regional fisheries organizations or arrangements

III. What should be the responsibilities of regional organizations or other regional arrangements concerning the two types of fish stocks? These may be, inter alia, the following:

(a) To collect and assess information and data relating to the state of the fisheries;

(b) To disseminate to member States the information and data collected and any assessment thereof;

(c) To provide a forum for member States to agree on conservation and management measures;

(d) To provide a forum for agreeing on the allocation of quotas to participating States or other measures relating to the regulation of fishing efforts;

(e) To provide for agreed monitoring, control and surveillance, including enforcement activities;

(f) To promote the use of environmentally safe fishing gear and technology in order to minimize waste, discards and untargeted catches;

(g) To promote the establishment and application of minimum international standards for the conservation of the particular fish stock;

(h) To promote responsible fishing practices;

(i) To provide for dispute settlement mechanisms, including binding third-party procedures, consistent with the 1982 United Nations Convention on the Law of the Sea, and applicable to all members, including those that may not be parties to the Convention on the Law of the Sea;

(j) To give effect, at the regional level, to the provisions of the Convention on the Law of the Sea and other international agreements consistent with the Convention concerning the conservation and management of the two types of fish stocks and the recommendations of this Conference.

Compliance with conservation and management measures

IV. How to ensure compliance with regional conservation and management measures? The following matters may be considered:

(a) Cooperation in effective monitoring, control and surveillance of fishing vessels;

(b) Use of licences or permits and other means to control fishing;

(c) Use of quotas and other rules for the control of fishing effort adopted in accordance with the regional arrangement;

(d) Marking of fishing vessels and fishing gear for identification;

(e) Sharing of catch, effort and other pertinent data from fishing operations with other interested States, including coastal States;

(f) Enforcement action by port States as required, including the investigation of records of a vessel within a port;

(g) Establishing regionally agreed observation and inspection schemes, including, as appropriate, the use of satellite transmitter equipment;

(h) Establishment and maintenance of registers of vessels fishing in the high seas of the region;

(i) Conduct of scientific activities on fisheries resources and establishment of regionally agreed scientific observation programmes concerning the two types of stocks, including stock assessment

methodologies, facilitation of activities of observers and researchers on fishing vessels;

(j) Observing minimum international standards for responsible fishing practices, including transshipment.

Enforcement of high seas fisheries, conservation and management measures

V. How to ensure effective enforcement of the conservation and management measures established for a region or subregion in respect of a stock? The following matters may be considered:

(a) Responsibilities of the flag State:

(i) The adoption of national legislative and administrative measures to ensure that vessels flying its flag comply with international conservation and management measures established in accordance with the Convention;

(ii) Implementation of observation, inspection, monitoring, control and surveillance rules and regulations adopted under subregional, regional or global agreements or arrangements;

(iii) Ensuring compliance by fishing fleets with global and regional standards for collection of catch, effort and other pertinent data in agreed format and time frame;

(iv) Making available the data and information collected to the designated repository for such data and information;

(v) Ensuring that the fishing vessels participate in programmes of scientific observation and facilitating the activities of observers and researchers on fishing vessels;

(vi) Implementation of international and regional vessel and gear marking standards;

(vii) Installation and operation of satellite data transmitter equipment for reporting of position and catch, in accordance with global or regional agreements or arrangements;

(viii) Establishment and maintenance of a register of vessels fishing under its flag on the high seas and making available relevant information regarding such vessels to the regional organization or other arrangement, to facilitate cooperation in observation, inspection, control and surveillance;

(ix) Funding and conduct of research on the relevant fish stock exploited on the high seas and on the associated and dependent species;

(x) Observing minimum international standards for responsible fishing practices;

(xi) Conducting investigations and undertaking enforcement action commensurate with the seriousness of the violations, where vessels of a flag State are believed to be in breach of flag States's administrative and legislative requirements or regional management measures on the high seas, and reporting to the relevant regional organization or arrangement on the result of these investigations and on the sanctions, if any, applied;

(xii) Cooperating with other States with respect to fishing vessels not entitled to fly the flag of any State and vessels that conceal their identity;

(b) Establishment of cooperative mechanisms as a part of a regional fisheries arrangement or agreement, in order to complement the enforcement of the responsibilities of a flag State;

(c) Dealing with the flagging or reflagging of fishing vessels for the purpose of avoiding regional conservation regimes for high seas fisheries;

(d) Dealing with fishing vessels not entitled to fly the flag of any State;

(e) Dealing with fishing vessels that conceal their identity.

Non-parties to a regional agreement or arrangement

VI. How to deal with vessels fishing in an area where a regional conservation and management regime for a particular high seas stock, established in accordance with the provisions of the Convention, applies and the flag State of the vessel does not cooperate with other States in the regional arrangement? Consideration should be given to the following:

(a) The consequences of non-cooperation;

(b) The relationship between non-cooperation with regional fisheries conservation and management arrangements and the obligation of all States to exercise their right to fish on the high seas "with due regard for the interests of other States" in their exercise of the same rights (article 87 (2)) and the rights and duties, as well as the interests of coastal States provided for, inter alia, in articles 63 (2) and 64 (see article 116 (b) of the Convention);

(c) Measures that could be taken by members of regional and international fisheries organizations to encourage cooperation by non-parties.

Settlement of disputes on matters of a technical nature

VII. Without prejudice to recourse to the procedures contained in the Convention on the Law of the Sea for the settlement of disputes relating to the interpretation and application of the provisions of the Convention, what additional procedures and mechanisms are needed to resolve speedily, and on an ad hoc basis, disputes on matters of a technical nature arising from the

implementation of the measures for the conservation and management of the two types of stocks in the high seas?

Compatibility and coherence between national and international conservation measures for the same stocks

VIII. How to establish minimum international standards for the conservation of straddling fish stocks or highly migratory fish stocks, for application in the high seas of a subregion or region, which could also serve as a recommendation for adoption by coastal States as a minimum standard for the conservation of the same fish stock in the exclusive economic zone (see article 61 (3)), without prejudice to the sovereign rights of coastal States over the living resources in that zone, as provided for in the Convention?

Notes

1/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

2/ General Assembly resolution 47/192, para. 2.

3/ Ibid., para. 3.

4/ See Agenda 21, chapter 17, programme area C, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I (A/CONF.151/26/Rev.1 (vol. I)/United Nations publication, Sales No. E.93.I.8), resolution 1, annex II.